

(1) Multiply the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiply the resulting pounds of protein by the protein price;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average other solids content of producer skim milk received by the handler, and multiply the resulting pounds of other solids by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price;

(d) Add the Class IV value computed as follows:

(1) Multiply the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price;

(e) Add an adjustment for somatic cell content of producer milk determined by multiplying the value reported pursuant to § 1030.30(a)(1) by the percentage of the total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(g) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant

regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(i) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(j) Subtract an amount equal to any credits applicable pursuant to § 1030.55;

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I pursuant to § 1000.43(d); and

(l) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1000.76(a)(5) or (c).

§ 1030.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment

of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30(a)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1030.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1030.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1030.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1030.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the

funds by the market administrator no later than the 15th day after the end of the month. Payment shall be the amount, if any, by which the amount specified in (a) of this section exceeds the amount specified in (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1030.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1030.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential as adjusted pursuant to § 1030.75 for the location of the plant from which received.

§ 1030.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1030.71(b) exceeds the amount computed pursuant to § 1030.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer; and

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section, each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraph (a)(1) and (a)(2) of this section, each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler

pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class price per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the shipping plant;

(ii) The hundredweight of Class II skim milk times \$.70;

(iii) The pounds of nonfat solids received in Class II and Class IV milk times the nonfat solids price for the month;

(iv) The pounds of butterfat received in Class II, Class III, and Class IV milk times the butterfat price for the month;

(v) The pounds of protein received in Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II, Class III, and Class IV milk received times the somatic cell adjustment; and

(viii) Add together the amounts computed in paragraphs (c)(2)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1030.72 by the payment date specified in paragraph (a), (b) or (c)(2) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b), prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1030.74 [Reserved]

§ 1030.75 Plant location adjustments for producer milk and nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price differential the amount by which the Class I price specified in § 1030.51 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1030.51, the difference shall be added to the producer price differential price; and

(b) The producer price differential applicable to other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1030.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1030.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1030.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

Administrative Assessment and Marketing Service Deduction

§ 1030.85 Assessment for order administration.

See § 1000.85 of this chapter.

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See § 1000.86 of this chapter.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

Subpart—Order Regulating Handling

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1032.86 Deduction for marketing services.

Authority: 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

General Provisions

§ 1032.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1032.2 Central marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations,

installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

(a) In the State of Colorado, the counties of: Adams, Arapahoe, Baca, Bent, Boulder, Clear Creek, Cheyenne, Crowley, Custer, Denver, Douglas, El Paso, Elbert, Gilpin, Huerfano, Jefferson, Kiowa, Kit Carson, Larimer, Las Animas, Lincoln, Logan, Morgan, Otero, Park, Phillips, Prowers, Pueblo, Sedgwick, Teller, Washington, Weld, and Yuma.

(b) In the State of Illinois, the counties of:

(1) Adams, Alexander, Bond, Brown, Bureau, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Kankakee, Knox, La Salle, Lawrence, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Marshall, Mason, Massac, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, Saline, Sangamon, Schuyler, Scott, Shelby, St. Clair, Stark, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Williamson, and Woodford;

(2) In Jo Daviess County, the city of East Dubuque; and

(3) In Whiteside County, the townships of Fulton, Ustick, Clyde, Genesee, Mount Pleasant, Union Grove, Garden Plain, Lyndon, Fenton, Newton, Prophetstown, Portland, and Erie.

(c) In the State of Iowa:

(1) All of the counties except: Howard, Kossuth, Mitchell (except the city of Osage), Winnebago, Winneshiek, and Worth; and

(2) In Mitchell County the city of Osage.

(d) All of the State of Kansas.

(e) In the State of Minnesota, the counties of: Lincoln, Nobles, Pipestone, and Rock.

(f) In the State of Missouri: (1) The counties of:

Andrew, Atchison, Bates, Buchanan, Caldwell, Carroll, Cass, Clark, Clay, Clinton, Daviess, De Kalb, Franklin, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Jackson, Jefferson, Johnson, Knox, Lafayette, Lewis, Lincoln, Livingston, Marion, Mercer, Nodaway, Pettis, Platte, Putnam, Ray, Saline, Schuyler, Scotland, Shelby, St.

Charles, St. Clair, Ste. Genevieve, St. Louis, Sullivan, Warren, and Worth; and (2) The city of St. Louis.

(g) In the State of Nebraska, the counties of: Adams, Antelope, Boone, Buffalo, Burt, Butler, Cass, Cedar, Chase, Clay, Colfax, Cuming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Jefferson, Johnson, Kearney, Keith, Knox, Lancaster, Lincoln, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, and York.

(h) All of the State of Oklahoma.

(i) In the State of South Dakota, the counties of: Aurora, Beadle, Bon Homme, Brookings, Clark, Clay, Codington, Davison, Deuel, Douglas, Hamlin, Hanson, Hutchinson, Jerauld, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Spink, Turner, Union, and Yankton.

(j) In the State of Wisconsin, the counties of: Crawford and Grant.

§ 1032.3 Route disposition.

See § 1000.3 of this chapter.

§ 1032.4 Plant.

See § 1000.4 of this chapter.

§ 1032.5 Distributing plant.

§ 1000.5 of this chapter.

§ 1032.6 Supply plant.

§ 1000.6 of this chapter.

§ 1032.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section. The pooling standards described in paragraphs (a), (c), (d), (e), and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant from which during the month:

(1) Total route disposition is equal to 25 percent of more of the total quantity of bulk fluid milk products physically received at the plant; and

(2) Route disposition in the marketing area is at least 15 percent of total route disposition.

(3) For purposes of this section, packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of qualifying the transferring plant as a pool distributing plant.

(b) A distributing plant located in the marketing area at which the majority of milk received is processed into aseptically packaged fluid milk products unless there are no sales from the plant into any marketing area and the plant operator in writing requests nonpool plant status for the plant for the month.

(c) A supply plant from which the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section during each of the months of September through November and January is 35 percent or more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1032.12(b)) and handlers described in § 1000.9(c), including milk diverted by the plant operator, and 25 percent for all other months, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of August through April shall continue to so qualify in each of the following months of May through July, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1032.13(c);

(3) The operator of a supply plant may include as qualifying shipments transfers of fluid milk products to distributing plants regulated under any other Federal order, except that credit for such transfers shall be limited to the amount of milk, including milk shipped directly from producers' farms, delivered to distributing plants qualified as pool plants pursuant to paragraphs (a) or (b) of this section;

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding three months.

(d) A plant located in the marketing area and operated by a cooperative association if, during the month or the immediately preceding 12-month period, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products at

plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) A system of supply plants may be qualified for pooling by the association of two or more supply plants operated by one or more handlers by meeting the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant, subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before September 1 requesting that such plants qualify as a system for the period of September through August of the following year. Such request will

contain a list of the plants participating in the system.

(3) Each plant included within a pool supply plant system shall continue each month as a plant in the system through the following August unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through August. No plant may be added in any subsequent month through the following August to a system that qualifies in September.

(4) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system;

(g) The applicable shipping percentages of paragraphs (a), (c), (d), and (f) of this section may be increased or decreased by the market administrator if found necessary to obtain needed shipments or to prevent uneconomic shipments. Before making a finding that a change is necessary the market administrator shall investigate the need for revision, either on the market administrator's own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that a revision is being considered and inviting data, views, and arguments. If the market administrator determines that an adjustment to the shipping percentages is necessary, the market administrator shall notify the industry within one day of the effective date of such adjustment.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) or (e) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for three consecutive months. On the basis of a

written application made by the plant operator at least 15 days prior to the date for which a determination of the market administrator is to be effective, the market administrator may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(4) A plant located outside the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1032.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1032.9 Handler.

See § 1000.9 of this chapter.

§ 1032.10 Producer-handler.

Except as provided in paragraph (g) of this section, *producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;

(b) Receives no fluid milk products from sources other than own farm production, pool handlers, and plants

fully regulated under another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool handlers;

(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to retail outlets or to a pool handler's plant;

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and

(g) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under § 1032.7(a) and the farm operated as a producer under § 1032.12.

§ 1032.11 [Reserved]

§ 1032.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1032.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1032.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1032.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 65 percent during the months of September through November and January, and not more than 75 percent during the months of February through August and December;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk; and

(5) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1032.14 Other source milk.

See § 1000.14 of this chapter.

§ 1032.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1032.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1032.17 [Reserved]

§ 1032.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1032.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1032.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1032.7 and each handler described in § 1000.9(c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of

solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1032.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1032.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1032.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1032.32 Other reports.

In addition to the reports required pursuant to §§ 1032.30 and 1032.31,

each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1032.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1032.41 [Reserved]

§ 1032.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1032.43 General classification rules.

See § 1000.43 of this chapter.

§ 1032.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1032.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1032.50 Class prices and component prices.

See § 1000.50 of this chapter.

§ 1032.51 Class I differential and price.

The Class I differential shall be the differential established for Jackson County, Missouri, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Jackson County, Missouri.

§ 1032.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1032.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1032.54 Equivalent price.

See § 1000.54 of this chapter.

Producer Price Differential

§ 1032.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants, and of each handler described in § 1000.9(c) as follows:

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I as determined pursuant to § 1000.44(a) by the Class I skim milk price applicable at the handler's location; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I as determined pursuant to § 1000.44(b) by the Class I butterfat

price applicable at the handler's location.

(b) Add the Class II value, computed as follows:

(1) Multiply the hundredweight of skim milk in Class II as determined pursuant to § 1000.44(a) by 70 cents;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class II as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class II as determined pursuant to § 1000.44(b) by the butterfat price;

(c) Add the Class III value computed as follows:

(1) Multiply the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiply the resulting pounds of protein by the protein price;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average other solids content of producer skim milk received by the handler, and multiply the resulting pounds of other solids by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price;

(d) Add the Class IV value computed as follows:

(1) Multiply the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price;

(e) Add an adjustment for somatic cell content of producer milk determined by multiplying the value reported pursuant to § 1032.30(a)(1) by the percentage of the total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(g) Add the amount obtained from multiplying the difference between the

Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(i) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I pursuant to § 1000.43(d); and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1000.76(a)(5) or (c).

§ 1032.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1032.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1032.62 Announcement of producer prices.

On or before the 11th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1032.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1032.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month. Payment shall be the amount, if any, by which the amount specified in (a) of this section exceeds the amount specified in (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1032.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1032.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential as adjusted pursuant to § 1032.75 for the location of the plant from which received.

§ 1032.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1032.71(b) exceeds the amount computed pursuant to § 1032.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1032.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer; and

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1032.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section, each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraph (a)(1) and (a)(2) of this section, each handler

who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class price per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the shipping plant;

(ii) The hundredweight of Class II skim milk times \$.70;

(iii) The pounds of nonfat solids received in Class II and Class IV milk times the nonfat solids price for the month;

(iv) The pounds of butterfat received in Class II, Class III, and Class IV milk times the butterfat price for the month;

(v) The pounds of protein received in Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class III milk times the other solids price for the month;

(vii) The hundredweight of Class II, Class III, and Class IV milk received times the somatic cell adjustment; and

(viii) Add together the amounts computed in paragraphs (c)(2)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1032.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1032.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b), prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1032.74 [Reserved]

§ 1032.75 Plant location adjustments for producer milk and nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price differential the amount by which the Class I price specified in § 1032.51 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1032.51, the difference shall be added to the producer price differential; and

(b) The producer price differential applicable to other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1032.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1032.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1032.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

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See § 1000.86 of this chapter.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

Subpart—Order Regulating Handling

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1033.86 Deduction for marketing services.

Authority: 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

General Provisions

§ 1033.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1033.2 Mideast marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Ohio

All of the State of Ohio.

Indiana Counties

Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clay, Clinton, Dearborn, Decatur, De Kalb, Delaware, Elkhart, Fayette, Fountain, Franklin, Fulton, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Kosciusko, Lagrange, Lake, La Porte, Lawrence, Madison, Marion, Marshall, Miami, Monroe, Montgomery, Morgan, Newton, Noble, Ohio, Owen, Parke, Porter, Pulaski, Putnam, Randolph, Ripley, Rush, Shelby, St. Joseph, Starke, Steuben, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Wabash, Warren, Wayne, Wells, White, and Whitley.

Kentucky Counties

Boone, Boyd, Bracken, Campbell, Floyd, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Pendleton, Pike, and Robertson.

Michigan Counties

All counties except Delta, Dickinson, Gogebic, Iron, Menominee, and Ontonagon.

Pennsylvania Counties

Allegheny, Armstrong, Beaver, Butler, Crawford, Erie, Fayette, Greene, Lawrence, Mercer, Venango, and Washington.

In Clarion County only the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby.

All of Westmoreland County except the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair, and the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward.

West Virginia Counties

Barbour, Boone, Brooke, Cabell, Calhoun, Doddridge, Fayette, Gilmer, Hancock, Harrison, Jackson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, Mingo, Monongalia, Ohio, Pleasants, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Taylor, Tucker, Tyler, Upshur, Wayne, Wetzel, Wirt, Wood, and Wyoming.

§ 1033.3 Route disposition.

See § 1000.3 of this chapter.

§ 1033.4 Plant.

See § 1000.4 of this chapter.

§ 1033.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1033.6 Supply plant.

See § 1000.6 of this chapter.

§ 1033.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section. The pooling standards described in paragraphs (a), (c), (d), (e), and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant from which during the month:

(1) Total route disposition is equal to 30 percent or more of the total quantity of bulk fluid milk products physically received at the plant;

(2) Route disposition in the marketing area is at least 30 percent of total route disposition.

(3) For purposes of this section, packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of qualifying the transferring plant as a pool distributing plant.

(b) A distributing plant located in the marketing area at which the majority of milk received is processed into aseptically packaged fluid milk products unless there are no sales from the plant into any marketing area and the plant operator in writing requests nonpool plant status for the plant for the month.

(c) A supply plant from which the quantity of bulk fluid milk products shipped to, received at, and physically unloaded into plants described in paragraph (a) or (b) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1033.12(b)) and handlers described in § 1033.9(c), as reported in § 1033.30(a), is not less than 30 percent of the milk received from dairy farmers, including milk diverted pursuant to § 1033.13, subject to the following conditions:

(1) Qualifying shipments pursuant to this paragraph may be made to the following plants, except whenever the authority provided in paragraph (g) of this section is applied to increase the shipping requirements specified in this section, only shipments to pool plants described in § 1033.7(a) and (b), and units described in § 1033.7(e) shall count as qualifying shipments for the purpose of meeting the increased shipments:

(i) Pool plants described in § 1033.7(a), (b) and (e);

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and

(iv) Distributing plants fully regulated under other Federal orders, except that credit for transfers to such plants shall be limited to the quantity shipped to pool distributing plants during the month. Qualifying transfers to other order plants shall not include transfers made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) The operator of a supply plant may include deliveries to pool distributing plants directly from farms of producers pursuant to § 1033.13(c) as up to 90 percent of the supply plant's qualifying shipments;

(3) A supply plant that meets the shipping requirements of this paragraph during each of the immediately preceding months of September through February shall be a pool plant during the following months of March through August unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (f) of this section, or the plant operator requests nonpool status for the plant. Such nonpool status shall be effective on the first day of the month following the receipts of such request and thereafter until the plant again qualifies as a pool plant on the basis of its deliveries to a pool distributing plant(s).

The automatic pool qualification of a plant can be waived if the handler or cooperative requests in writing to the market administrator the nonpool status of such plant. The request must be made prior to the beginning of any month during the March through August period. The plant shall be a nonpool plant for such month and thereafter until it requalifies under paragraph (c) of this section on the basis of actual shipments therefrom. To requalify as a pool plant under paragraph (d), (e) or (f) of this section, such plant must first

have met the percentage shipping requirements of paragraph (c) of this section for 6 consecutive months; and

(4) A supply plant that does not meet the minimum delivery requirements specified in this paragraph to qualify for pool status in the current month because a distributing plant to which the supply plant delivered its fluid milk products during such month failed to qualify as a pool plant pursuant to paragraph (a) or (b) of this section shall continue to be a pool plant for the current month if such supply plant qualified as a pool plant in the three immediately preceding months.

(d) A plant operated by a cooperative association if, during the month, 35 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s), and classification other than Class I is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 35-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted regulatory authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under (a), (b), or (c) of this section or under the similar provisions of another Federal order applicable to a distributing plant or supply plant.

(e) A plant located inside the marketing area which has been a pool plant under this order or its predecessor orders for twelve consecutive months, but is not otherwise qualified under this paragraph, if it has a marketing agreement with a cooperative association and it fulfills the following conditions:

(1) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the month is not less than 35 percent; and

(2) Shipments for qualification purposes shall include both transfers from supply plants to plants described in paragraph (c)(1) of this section, and deliveries made direct from the farm to plants qualified under paragraph (a) of this section.

(f) A system of supply plants may be qualified for pooling by the association of two or more supply plants operated

by one or more handlers by meeting the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant and subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area, or was a pool supply plant for each of the three months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status. Cooperative associations may not use shipments pursuant to § 1033.9(c) to qualify plants located outside the marketing area;

(2) A written notification to the market administrator listing the plants to be included in the system and the handler that is responsible for meeting the performance requirements of this paragraph under a marketing agreement certified to the market administrator by the designated handler and any others included in the system, and the period during which such consideration shall apply. Such notice, and notice of any change in designation, shall be furnished on or before the fifth working day following the month to which the notice applies. The listed plants included in the system shall also be in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the last listed plant shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining listed plants have met the minimum shipping requirements; and

(3) Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system unless the plant subsequently fails to qualify for pooling, or the responsible handler submits a written notification to the market administrator prior to the first day of the month that the plant is to be deleted from the system, or that the system is to be discontinued. In any month of March through August, a system shall not contain any plant which was not qualified under this paragraph, either individually or as a member of a system, during the previous September through February.

(g) The performance standards of paragraphs (a), (c), (d), (e) and (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision, either on the market administrator's

own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that a revision is being considered and inviting data, views, and arguments. If the market administrator determines that an adjustment to the shipping percentages is necessary, the market administrator shall notify the industry within one day of the effective date of such adjustment.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for three consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) or (d) of this section that also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) Any plant that qualifies as a pool plant in each of the immediately

preceding three months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

§ 1033.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1033.9 Handler.

See § 1000.9 of this chapter.

§ 1033.10 Producer-handler.

Except as provided in paragraph (g) of this section, *producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;

(b) Receives no fluid milk products from sources other than own farm production, pool handlers, and plants fully regulated under another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool handlers;

(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to retail outlets or to a pool handler's plant;

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and

(g) Producer-handler shall not include any producer who also operates a distributing plant if the producer-

handler so requests that the two be operated as separate entities with the distributing plant regulated under § 1033.7(a) and the farm operated as a producer under § 1033.12.

§ 1033.11 [Reserved]

§ 1033.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1033.13; or

(2) Received by a handler described in § 1033.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1033.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1033.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or by a cooperative association described in § 1033.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) The equivalent of at least one day's production is caused by the handler to be physically received at a pool plant in each of the months of September through November;

(3) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c)), the handler diverted to nonpool plants not more than 60 percent during the months of September through February;

(4) Diverted milk shall be priced at the location of the plant to which diverted;

(5) Any milk diverted in excess of the limits set forth in paragraph (d)(3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(6) The delivery day requirements and the diversion percentages in paragraphs (d)(2) and (d)(3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and

arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1033.14 Other source milk.

See § 1000.14 of this chapter.

§ 1033.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1033.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1033.17 [Reserved]

§ 1033.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1033.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1033.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1033.7 and each handler described in § 1000.9(c) shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler; and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and somatic cell information as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been

producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1033.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1033.7 and each handler described in § 1033.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1033.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1033.32 Other reports.

In addition to the reports required pursuant to §§ 1033.30 and 1033.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1033.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1033.41 [Reserved]

§ 1033.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1033.43 General classification rules.

See § 1000.43 of this chapter.

§ 1033.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1033.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1033.50 Class prices and component prices.

See § 1000.50 of this chapter.

§ 1033.51 Class I differential and price.

The Class I differential shall be the differential established for Cuyahoga County, Ohio which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Cuyahoga County, Ohio.

§ 1033.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1033.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1033.54 Equivalent price.

See § 1000.54 of this chapter.

Producer Price Differential

§ 1033.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants, and of each handler described in § 1033.9(c) as follows:

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I as determined pursuant to § 1000.44(a) by the Class I skim milk price applicable at the handler's location; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I as determined pursuant to § 1000.44(b) by the Class I butterfat price applicable at the handler's location;

(b) Add the Class II value computed as follows:

(1) Multiply the hundredweight of skim milk in Class II as determined pursuant to § 1000.44(a) by 70 cents;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class II as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class II as determined pursuant to § 1000.44(b) by the butterfat price;

(c) Add the Class III value computed as follows:

(1) Multiply the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiply the resulting pounds of protein by the protein price;

(2) Add an amount obtained by subtracting from the pounds of skim milk in Class III as determined pursuant

to § 1000.44(a) the pounds of protein determined in § 1033.60(c)(1) and multiplying the resulting pounds of fluid carrier by a price determined by multiplying 5.7 times the other solids price and dividing the result by 91 (the resulting price, rounded to the 4th decimal place, shall be known as the fluid carrier price); and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price;

(d) Add the Class IV value computed as follows:

(1) Multiply the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price;

(e) Add an adjustment for the somatic cell content of producer milk determined by multiplying the value reported pursuant to § 1033.30(a)(1) by the percentage of the total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(g) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(i) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I pursuant to § 1000.43(d); and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1000.76(a)(5) or (c).

§ 1033.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1033.60 for all

handlers required to file reports prescribed in § 1033.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, fluid carrier, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, the fluid carrier price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1033.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1033.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce publicly the following prices and information:

- (a) The producer price differential;
- (b) The protein price;
- (c) The fluid carrier price;
- (d) The butterfat price;
- (e) The somatic cell adjustment rate;
- (f) The average butterfat and protein content of producer milk; and
- (g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1033.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1033.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month. Payment shall be the amount, if any, by which the amount specified in (a) of this section exceeds the amount specified in (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1033.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1033.75;

(2) An amount obtained by multiplying the total pounds of protein and butterfat contained in producer milk by the protein and butterfat prices, respectively;

(3) An amount obtained by multiplying the total hundredweight of fluid carrier contained in producer milk by the fluid carrier price computed pursuant to § 1033.60(c)(2);

(4) The total value of the somatic cell adjustment to producer milk; and

(5) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential as adjusted pursuant to § 1033.75 for the location of the plant from which received.

§ 1033.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1033.71(b) exceeds the amount computed pursuant to § 1033.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1033.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer; and

(2) *Final payment.* For milk received during the month, payment shall be

made so that it is received by each producer no later than the 17th day after the end of the month in an amount equal to not less than the sum of:

- (i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1033.75;
 - (ii) The pounds of butterfat received times the butterfat price for the month;
 - (iii) The pounds of protein received times the protein price for the month;
 - (iv) The hundredweight of fluid carrier received times the fluid carrier price for the month;
 - (v) The hundredweight of milk received times the somatic cell adjustment for the month;
 - (vi) Less any payment made pursuant to paragraph (a)(1) of this section;
 - (vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and
 - (viii) Less deductions for marketing services pursuant to § 1000.86.
- (b) *Payments for milk received from cooperative associations.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section, each handler shall pay to a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* For bulk fluid milk/skimmed milk received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the partial payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month;

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available, adjusted for butterfat and plant location;

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be not less than an amount computed by multiplying the respective quantities assigned to each class under § 1000.44 by the value calculated pursuant to

§ 1033.60(a) and location adjustments pursuant to § 1033.75, minus the amount of the payment made to the association pursuant to paragraph (a)(1) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1033.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(c), a supporting statement in a form that may be retained by the recipient which shall show:

- (1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;
- (2) The daily and total pounds, and the month and dates such milk was received from that producer;
- (3) The total pounds of butterfat, protein, and fluid carrier contained in the producer's milk;
- (4) The average somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1033.74 [Reserved]

§ 1033.75 Plant location adjustments for producer milk and nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price differential the amount by which the Class I price specified in § 1033.51 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1033.51, the difference shall be added to the producer price differential; and

(b) The producer price differential applicable to other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1033.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1033.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1033.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

Administrative Assessment and Marketing Service Deduction

§ 1033.85 Assessment for order administration.

See § 1000.85 of this chapter.

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See § 1000.86 of this chapter.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

Subpart—Order Regulating Handling

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- 1124.85 Assessment for order administration.
 - 1124.86 Deduction for marketing services.
- Authority: 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

General Provisions

§ 1124.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1124.2 Pacific Northwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Washington

All of the State of Washington.

Idaho Counties

Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone.

Oregon Counties

Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill.

§ 1124.3 Route disposition.

See § 1000.3 of this chapter.

§ 1124.4 Plant.

See § 1000.4 of this chapter.

§ 1124.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1124.6 Supply plant.

See § 1000.6 of this chapter.

§ 1124.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section. The pooling standards described in paragraphs (a), (c), (d), (e), and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant from which during the month:

(1) Total route disposition is equal to 25 percent of more of the total quantity of bulk fluid milk products physically received at the plant; and

(2) Route disposition in the marketing area is at least 15 percent of total route disposition.

(3) For purposes of this section, packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of qualifying the transferring plant as a pool distributing plant.

(b) A distributing plant located in the marketing area at which the majority of

milk received is processed into aseptically packaged fluid milk products unless there are no sales from the plant into any marketing area and the plant operator in writing requests nonpool plant status for the plant for the month.

(c) A supply plant from which during any month not less than 20 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product to a pool distributing plant or is a route disposition in the marketing area of fluid milk products processed and packaged at such plant;

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) A cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1000.9(c);

(3) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1124.13(c);

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding three months.

(d)-(f) [Reserved]

(g) The applicable shipping percentages of paragraphs (a) and (c) of this section may be increased or decreased by the market administrator if found necessary to obtain needed shipments or to prevent uneconomic shipments. Before making a finding that a change is necessary the market administrator shall investigate the need for revision, either on the market administrator's own initiative or at the request of interested persons. If such

investigation shows that a revision might be appropriate, a notice shall be issued stating that a revision is being considered and inviting data, views, and arguments. If the market administrator determines that an adjustment to the shipping percentages is necessary, the market administrator shall notify the industry within one day of the effective date of such adjustment.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for three consecutive months;

(4) A plant located outside the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order.

§ 1124.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1124.9 Handler.

See § 1000.9 of this chapter.

§ 1124.10 Producer-handler.

Except as provided in paragraph (f) of this section, *producer-handler* means a person who operates a dairy farm and a distributing plant from which there is monthly route disposition within the marketing area in excess of 150,000

pounds during the month and who has been so designated by the market administrator upon determination that all of the requirements of this section have been met, providing that none of the conditions therein for cancellation of such designation exists.

(a) *Requirements for designation.* The producer-handler provides proof satisfactory to the market administrator that:

(1) In its capacity as a dairy farmer, the care and management of the dairy animals and other resources and facilities (designated as such pursuant to paragraph (b)(1) of this section) necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order); and

(2) In its capacity as a handler, the plant operation at which it processes and packages and from which it distributes its own milk production (designated as such pursuant to paragraph (b)(2) of this section) are under the complete and exclusive control and management of the producer-handler and are at its own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes or distributes at or through any of its designated milk handling, processing or distributing resources and facilities other source milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(5) Designation of any person as a producer-handler following a cancellation of its prior designation shall be preceded by performance in accordance with paragraph (a)(1) through (4) of this section for a period of 1 month.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing

and distributing resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities. All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement; and

(iii) Which are directly, indirectly or partially owned, operated or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph, any such milk production resources and facilities which the producer-handler proves to the satisfaction of the market administrator do not constitute an actual or potential source of milk supply for the producer-handler's operation as such shall not be considered a part of the producer-handler's milk production resources and facilities.

(2) As milk handling, processing and distributing resources and facilities. All resources and facilities (including store outlets) used for handling, processing and distributing any fluid milk product:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler; or

(ii) In which the producer-handler in any way has an interest, including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through (4) of this section are not continuing to be met, or under any of the following conditions:

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section is delivered in the name of another person as producer milk to another handler;

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant or acquire for route disposition fluid milk products from fully regulated plants and handlers

under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month; or

(3) The producer-handler disposes of fluid milk products using the distribution system of another handler, except for direct deliveries by the producer-handler to retail outlets or to a pool handler's plant.

(4) Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant location and farm location(s) of persons designated as producer-handlers, of those whose designations have been canceled, and the effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.9(c) that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

(f) *Producer-handler* shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated pursuant to § 1124.7(a) and the farm operated as a producer pursuant to § 1124.12.

§ 1124.11 Cooperative reserve supply unit.

Cooperative reserve supply unit means any cooperative association or its agent that is a handler pursuant to § 1000.9(c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to § 1124.73 and has been a handler of producer milk under this or its predecessor order during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a pool distributing plant. A cooperative reserve supply unit shall be subject to the following conditions:

(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section;

(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as further provided below:

(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use are needed for plants defined in § 1124.7(a) or (b). Before making such a finding, the market administrator shall investigate the need for such shipments either on the market administrator's own initiative or at the request of interested persons. If the market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement.

(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to § 1000.9(c) for at least 12 consecutive months.

§ 1124.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1124.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1124.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk, at any time during the month, has been pooled under a State milk order.

§ 1124.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 65 percent during the months of

September through November and January, and not more than 75 percent during the months of February through August and December;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk; and

(5) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments.

Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1124.14 Other source milk.

See § 1000.14 of this chapter.

§ 1124.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1124.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1124.17 [Reserved]

§ 1124.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1124.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1124.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1124.7 and each handler described in § 1000.9(c) shall

report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1124.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1124.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1124.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1124.32 Other reports.

In addition to the reports required pursuant to §§ 1124.30 and 1124.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1124.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1124.41 [Reserved]

§ 1124.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1124.43 General classification rules.

See § 1000.43 of this chapter.

§ 1124.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1124.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1124.50 Class prices and component prices.

See § 1000.50 of this chapter.

§ 1124.51 Class I differential and price.

The Class I differential shall be the differential established for King County, Washington, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for King County, Washington.

§ 1124.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1124.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1124.54 Equivalent price.

See § 1000.54 of this chapter.

Producer Price Differential

§ 1124.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants, and of each handler described in § 1000.9(c) as follows:

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I as determined pursuant to § 1000.44(a) by the Class I skim milk price applicable at the handler's location; and

(2) Add an amount obtained by multiplying the pounds of butterfat in

Class I as determined pursuant to § 1000.44(b) by the Class I butterfat price applicable at the handler's location.

(b) Add the Class II value, computed as follows:

(1) Multiply the hundredweight of skim milk in Class II as determined pursuant to § 1000.44(a) by 70 cents;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class II as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price;

(3) Add an amount obtained by multiplying the pounds of butterfat in Class II as determined pursuant to § 1000.44(b) by the butterfat price;

(c) Add the Class III value computed as follows:

(1) Multiply the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiply the resulting pounds of protein by the protein price;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average other solids content of producer skim milk received by the handler, and multiply the resulting pounds of other solids by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price;

(d) Add the Class IV value computed as follows:

(1) Multiply the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price;

(e) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(f) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of

skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(h) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(i) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I pursuant to § 1000.43(d); and

(j) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1000.76(a)(5) or (c).

§ 1124.61 Computation of producer price differential.

For each month the market administrator shall compute a producer

price differential per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1124.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1124.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The average butterfat, protein and other solids content of producer milk; and

(f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payment for Milk**§ 1124.70 Producer-settlement fund.**

See § 1000.70 of this chapter.

§ 1124.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month. Payment shall be the amount, if any, by which the amount specified in (a) of this section exceeds the amount specified in (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1124.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1124.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1124.60(i) by the producer price differential as adjusted pursuant to § 1124.75 for the location of the plant from which received.

§ 1124.72 Payments from the producer-settlement fund.

No later than the 18th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(b) exceeds the amount computed pursuant to § 1124.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 18th day of the month, partial payment shall be made

so that it is received by each producer on or before the last day of the month for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer; and

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 19th day after the end of the month in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1124.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) Less any payment made pursuant to paragraph (a)(1) of this section;

(vi) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(vii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the 2nd day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section, each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the 2nd day prior to the dates specified in paragraph (a)(1) and (a)(2) of this section, each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class price per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the shipping plant;

(ii) The hundredweight of Class II skim milk times \$.70;

(iii) The pounds of nonfat solids received in Class II and Class IV milk times the nonfat solids price for the month;

(iv) The pounds of butterfat received in Class II, Class III, and Class IV milk times the butterfat price for the month;

(v) The pounds of protein received in Class III milk times the protein price for the month;

(vi) The pounds of other solids received in Class III milk times the other solids price for the month; and

(vii) Add together the amounts computed in paragraphs (c)(2)(i) through (vi) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1124.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month; and

(v) Add together the amounts computed in paragraphs (c)(3)(i) through (iv) of this section and from that sum deduct any payment made

pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1124.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b), prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1124.74 [Reserved]

§ 1124.75 Plant location adjustments for producer milk and nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price differential the amount by which the Class I price specified in § 1124.51 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1124.51, the difference shall be added to the producer price differential; and

(b) The producer price differential applicable to other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1124.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1124.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1124.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

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PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

General Provisions

§ 1126.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1126.2 Southwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part

thereof is within any of the listed states or political subdivisions:

New Mexico and Texas

All of the States of New Mexico and Texas.

Colorado Counties

Archuleta, LaPlata, and Montezuma.

§ 1126.3 Route disposition.

See § 1000.3 of this chapter.

§ 1126.4 Plant.

See § 1000.4 of this chapter.

§ 1126.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1126.6 Supply plant.

See § 1000.6 of this chapter.

§ 1126.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (a), (c), and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant from which during the month the total route disposition is equal to 25 percent or more of the total quantity of fluid milk products physically received at such plant and route disposition in the marketing area is at least 15 percent of total route distribution. Packaged fluid milk products that are transferred to a distributing plant and which are classified as Class I milk shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of determining the transferring plant's pool status under this paragraph.

(b) A distributing plant located in the marketing area at which the majority of milk received is processed into aseptically packaged fluid milk products unless there are no sales from the plant into any marketing area and the plant operator in writing requests nonpool status for the plant for the month.

(c) A supply plant from which 50 percent of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c) is transferred to pool distributing plants.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 30 percent of the producer milk of

members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable percentages in paragraphs (a), (c), and (d) of this section may be increased or decreased up to 10 percentage points by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order, and more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area that meets the pooling requirements of another Federal order and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant qualified pursuant to paragraph (a) of this section that is located in another Federal order marketing area if the plant meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) or (d) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a pool plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1126.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1126.9 Handler.

See § 1000.9 of this chapter.

§ 1126.10 Producer-handler.

Except as provided in paragraph (g) of this section, *producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;

(b) Receives no fluid milk products from sources other than own farm production, pool handlers, and plants fully regulated under another Federal order.

(c) Receives no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order, including such products received at a location other than the producer-handler's processing plant for distribution on routes. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool handlers;

(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to retail outlets or to a pool handler's plant;

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and

(g) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under § 1126.7(a) and the farm operated as a producer under § 1126.12.

§ 1126.11 [Reserved]

§ 1126.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1126.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1126.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and the milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1126.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components

of skim milk), including nonfat components, and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator for the account of the handler operating such plant to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a producer whose dairy farm is located outside the marketing area shall not be eligible for diversion unless at least 15% of the producer's milk is physically received at a pool plant during the month;

(2) The total quantity of milk so diverted during the month by a cooperative association shall not exceed the total quantity of producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to this paragraph. The total quantity of milk so diverted during the month shall not exceed the total quantity of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1126.7(e)) during the month;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(5) Diverted milk shall be priced at the location of the plant to which diverted; and

(6) The delivery day requirements in paragraph (d)(1) and the diversion percentages in paragraphs (d)(2) and (3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1126.14 Other source milk.

See § 1000.14 of this chapter.

§ 1126.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1126.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1126.17 [Reserved]

§ 1126.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1126.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1126.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 8th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) Each pool plant operator and each handler described in § 1000.9(c), shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of nonfat solids other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler; and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) or (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1126.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1126.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information specified in § 1126.73(e);

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1126.32 Other reports.

In addition to the reports required pursuant to §§ 1126.30 and 1126.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1126.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1126.41 [Reserved]

§ 1126.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1126.43 General classification rules.

See § 1000.43 of this chapter.

§ 1126.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1126.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1126.50 Class prices and component prices.

See § 1000.50 of this chapter.

§ 1126.51 Class I differential and price.

The Class I differential shall be the differential established for Dallas County, Texas, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Dallas County, Texas.

§ 1126.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1126.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1126.54 Equivalent price.

See § 1000.54 of this chapter.

Producer Price Differential

§ 1126.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) as follows:

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I as determined pursuant to § 1000.44(a) by the Class I skim milk price applicable at the handler's location; and

(2) Add an amount obtained by multiplying the total pounds of butterfat in Class I as determined pursuant to § 1000.44(b) by the Class I butterfat price applicable at the handler's location.

(b) Add the Class II value, computed as follows:

(1) Multiply the hundredweight of milk in Class II as determined pursuant to § 1000.44(a) by 70 cents;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class II as determined pursuant to

§ 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiplying the resulting pounds of nonfat solids by the nonfat solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class II as determined pursuant to § 1000.44(b) by the butterfat price.

(c) Add the Class III value, computed as follows:

(1) Multiply the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiply the resulting pounds of protein by the protein price;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average other solids content of producer skim milk received by the handler, and multiplying the resulting pounds of other solids by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price.

(d) Add the Class IV value, computed as follows:

(1) Multiply the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price.

(e) Add an adjustment for somatic cell content of producer milk as determined by multiplying the value reported pursuant to § 1126.30(a)(1) by the percentage of the total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c).

(f) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(g) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(i) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d); and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(5) or (c).

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than 2 cents per

hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1);

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1126.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1126.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) The somatic cell adjustment rate;

(f) The average butterfat, nonfat solids, protein, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1126.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1126.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month. Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1126.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1126.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential as adjusted pursuant to § 1126.75 for the location of the plant from which received.

§ 1126.72 Payments from the producer-settlement fund.

No later than the 17th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1126.71(b) exceeds the amount computed pursuant to § 1126.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1126.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the

month, payment shall be made so that it is received by the producer on or before the 26th day of the month for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer; and

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 18th day after the end of the month in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1126.75;

(ii) Multiply the pounds of butterfat received times the butterfat price for the month;

(iii) Multiply the pounds of protein received times the protein price for the month;

(iv) Multiply the pounds of other solids received times the other solids price for the month;

(v) Multiply the hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Add the amounts computed in paragraph (a)(2)(i) through (v) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) On or before the day prior to the dates specified for partial and final payments pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* For bulk milk/skimmed milk received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month;

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant

operator's estimated use value of the milk using the most recent class prices available, adjusted for butterfat value and plant location;

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) Multiply the hundredweight of Class I skim milk by the Class I skim milk price for the month applicable at the location of the shipping plant;

(ii) Multiply the pounds of Class I butterfat by the Class I butterfat price for the month applicable at the location of the shipping plant;

(iii) Multiply the hundredweight of Class II skim milk by \$.70;

(iv) Multiply the pounds of nonfat solids received in Class II and Class IV milk by the nonfat solids price for the month;

(v) Multiply the hundredweight of butterfat in Class II, III, and IV milk by the butterfat price for the month;

(vi) Multiply the pounds of protein received in Class III milk by the protein price for the month;

(vii) Multiply the pounds of other solids received in Class III milk by the other solids price for the month;

(viii) Multiply the hundredweight of Class II, Class III, and Class IV milk received times the somatic cell adjustment;

(ix) Add together the amounts computed in paragraph (b)(3)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1126.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to cooperative associations pursuant to paragraphs (a) and (b) of this section,

but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1126.74 [Reserved]

§ 1126.75 Plant location adjustments for producer milk and nonpool milk.

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at which the milk was physically received by subtracting from the price differential the amount by which the Class I price specified in § 1126.51 exceeds the Class I price at the plant's location. If the

Class I price at the plant location exceeds the Class I price specified in § 1126.51, the difference shall be added to the producer price differential; and

(b) The producer price differential applicable for other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1126.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1126.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1126.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

Administrative Assessment and Marketing Service Deduction

§ 1126.85 Assessment for order administration.

See § 1000.85 of this chapter.

§ 1126.86 Deduction for marketing services.

See § 1000.86 of this chapter.

PART 1131—MILK IN ARIZONA-LAS VEGAS MARKETING AREA

Subpart—Order Regulating Handling

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1131.86 Deduction for marketing services.

Authority: 7 U.S.C. 601—674.

Subpart—Order Regulating Handling

General Provisions

§ 1131.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1131.2 Arizona-Las Vegas marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Arizona

All of the State of Arizona.

Nevada Counties

Clark.

§ 1131.3 Route disposition.

See § 1000.3 of this chapter.

§ 1131.4 Plant.

See § 1000.4 of this chapter.

§ 1131.5 Distributing Plant.

See § 1000.5 of this chapter.

§ 1131.6 Supply Plant.

See § 1000.6 of this chapter.

§ 1131.7 Pool plant.

Pool Plant means a plant or unit of plants specified in paragraphs (a) through (e) of this section. The pooling standards described in paragraphs (a), (c), and (d) of this section are subject to modification pursuant to paragraph (f) of this section.

(a) A distributing plant from which during the month there is route disposition equal to 25 percent or more of the total quantity of bulk fluid milk products physically received at such plant; and route disposition in the marketing area of at least 15 percent of total route disposition. For purposes of this section, packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of qualifying the transferring plant as a pool distributing plant.

(b) A distributing plant located in the marketing area which during the month processes a majority of its receipts of milk products into aseptically packaged fluid milk products. If during the month the plant had no route disposition into any federal milk order the plant operator may request nonpool status for such plant for the month.

(c) A supply plant from which 50% or more of the total quantity of milk that is physically received at such plant from dairy farmers and handlers described in § 1000.9(c) is transferred to pool distributing plants.

(d) A plant located within the marketing area and operated by a cooperative association if, during the month, or the immediately preceding 12-month period, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association

and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a) of this section and subject to all of the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section;

(3) A written request to form a unit must be filed by the handler with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) The applicable percentages in paragraphs (a), (b), (c), and (d) of this section may be increased or decreased by the market administrator if found necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision, either on the market administrator's own initiative or at the request of interested parties. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that a revision adjustment is being considered and inviting data, views, and arguments. If the market administrator determines that an adjustment to the shipping percentages is necessary, the market administrator shall notify the industry within one day of the effective date of such adjustment.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e).

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) or (e) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for three consecutive months.

(4) A plant located outside the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order or a State order providing for marketwide pooling, and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1131.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1131.9 Handler.

See § 1000.9 of this chapter.

§ 1131.10 Producer-handler.

Except as provided in paragraph (g) of this section, *producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;

(b) Receives no fluid milk products from sources other than own farm

production, pool handlers, and plants fully regulated under another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool handlers;

(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to retail outlets or to a pool handler's plant;

(f) Does not distribute fluid milk products to a wholesale customer who also is serviced by a handler described in § 1000.9(a) or (d) that supplied the same product in the same-sized package with a similar label to the wholesale customer during the month;

(g) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and

(h) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under § 1131.7(a) and the farm operated as a producer under § 1131.12.

§ 1131.11 [Reserved]

§ 1131.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1131.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1131.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk is received at a pool plant if during the month milk from the same farm is received at a nonpool plant (except a nonpool plant that has no utilization or milk products in any class other than Class III or Class IV) other than as a diversion under this or some other Federal order.

§ 1131.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of the pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it was picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received.

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants.

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a handler in any month shall not exceed 20 percent of the total producer milk caused by the handler to be received at pool plants or diverted;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1131.12(b)(5); and

(5) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1131.14 Other source milk.

See § 1000.14 of this chapter.

§ 1131.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1131.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1131.17 [Reserved]

§ 1131.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1131.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1131.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office received the report on or before the 7th day after the end of the month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the plant operator to other plants;

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(6) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk received from each of the handler's own-farm production units, showing separately the production of each farm unit and the number of dairy cows in production at each farm unit;

(2) Fluid milk products and bulk fluid cream products received at its plant or acquired for route disposition from pool plants, other order plants, and handlers described in § 1000.9(c);

(3) Receipts of other source milk not reported pursuant to paragraph (d)(2) of this section;

(4) Inventories at the beginning and end of the month of fluid milk products and fluid cream products; and

(5) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(e) Each handler not specified in paragraphs (a) through (d) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1131.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler

described in § 1000.9(a) and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

- (1) The producer's name and address;
- (2) The total pounds of milk received from the producer;
- (3) The average butterfat content of such milk; and
- (4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1131.32 Other reports.

In addition to the reports required pursuant to § 1131.30 and § 1131.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1131.40 Classes of utilization.

See § 1000.40 of this chapter.

§ 1131.41 [Reserved]

§ 1131.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1131.43 General classification rules.

See § 1000.43 of this chapter.

§ 1131.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1131.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1131.50 Class prices, component prices, Class I differential and price.

Class prices and component prices are described in § 1000.50. The Class I differential shall be the differential established for Maricopa County, Arizona, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Maricopa County, Arizona.

§ 1131.51 [Reserved]

§ 1131.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1131.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1131.54 Equivalent price.

See § 1000.54 of this chapter.

Uniform Price

§ 1131.60 Handler's value of milk.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) as follows:

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii), and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding

steps of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(f) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d);

(g) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1000.76(a)(5) or (c).

§ 1131.61 Computation of uniform price, uniform butterfat price and uniform skim milk price.

(a) For each month the market administrator shall compute the uniform price per hundredweight. If the unreserved balance in the producer-settlement fund to be included in the computation is less than two cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1131.71 for the preceding month shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(1) Combine into one total the values computed pursuant to § 1131.60 for all handlers required to file reports prescribed in § 1131.30;

(2) Add an amount equal to the sum of the location adjustments computed pursuant to § 1131.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Add or subtract, as the case may be, to obtain an all-producer milk test of 3.5% butterfat, the value of the required pounds of butterfat times the uniform

butterfat price computed pursuant to paragraph (b) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk;

(ii) The total hundredweight for which a value is computed pursuant to § 1131.60(f); and

(6) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the uniform price for milk received from producers during the month.

(b) *Uniform butterfat price.* The Uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be obtained by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices (Class I butterfat price for Class I and the butterfat price for all other classes) and dividing the sum of such values by the total pounds of such butterfat.

(c) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be the uniform price for the month computed pursuant to paragraph (a) of this section, less the uniform butterfat price for the month computed pursuant to paragraph (b) of this section multiplied by 3.5, with the result divided by .965.

§ 1131.62 Announcement of uniform price, uniform butterfat price and uniform skim milk price.

On or before the 11th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The uniform price computed pursuant to § 1131.61 for such month;

(b) The uniform butterfat price computed pursuant to § 1131.61(b) for such month; and

(c) The uniform skim milk price computed pursuant to § 1131.61(c) for such month.

Payments for Milk

§ 1131.70 Producer-settlement fund.

See § 1000.70 of this chapter.

§ 1131.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 13th day after the end of the month. Payments due the market administrator shall be deemed not to have been made until the money owed has been received at the market

administrator's office, or deposited into the market administrator's bank account. Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1131.60.

(b) The sum of:

(1) The value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and

(2) The value at the uniform price as adjusted pursuant to § 1131.75 applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1131.60(e).

§ 1131.72 Payments from the producer-settlement fund.

No later than the 14th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1131.71(b) exceeds the amount computed pursuant to § 1131.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1131.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b) and (c) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial Payment.* For each producer who has not discontinued shipments as of the 25th day of the month, payment shall be made so that it is received by the producer on or before the 27th day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, for milk received from such producer during the first 15 days of the month at not less than 1.3 times the lowest class price for the preceding month, adjusted for plant location pursuant to § 1131.75 and proper deductions authorized in writing by the producer; and

(2) *Final Payment.* On or before the 15th day of the following month, not less than an amount computed by the sum of the following:

(i) The hundredweight of producer milk received times the uniform price for the month as adjusted pursuant to § 1131.75;

(ii) The hundredweight of producer skim milk received times the uniform skim milk price for the month;

(iii) The pounds of producer butterfat received times the uniform butterfat price for the month;

(iv) Less payments made pursuant to paragraph (a) of this section;

(v) Less deductions made for marketing service pursuant to § 1000.86;

(vi) Plus or minus adjustments for errors made in previous payments to such producer; and

(vii) Less proper deductions authorized in writing by such producer.

(b) Two days prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* On or before the 25th day of the month each handler shall pay to a cooperative association that the market administrator determines is authorized by its members to collect payment for their milk, an amount not less than 1.3 times the lowest class price for the preceding month multiplied by the hundredweight of milk received during the first 15 days of the month from such cooperative association, including the milk of producers not members of such cooperative association who the market administrator determines have authorized the cooperative association to collect payment for their milk;

(2) *Final Payment to a cooperative association.* On or before the 13th day of the following month, each handler shall pay to a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk not less than an amount computed pursuant to paragraph (a)(2) of this section for milk received from such cooperative association during the month, including the milk of producers not members of such cooperative association who the market administrator determines have authorized the cooperative association to collect payment for their milk;

(c) If a handler has not received full payment from the market administrator pursuant to § 1131.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata his payments pursuant to such paragraphs, but by not more than the amount of such underpayment. Payments to producers shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made

because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund. In the event the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a handler described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

- (1) The month, and identity of the producer;
- (2) The daily and total pounds and the total pounds of butterfat content of producer milk;
- (3) The minimum rate at which payment to the producer is required pursuant to this order;
- (4) The rate used in making payments if the rate is other than the applicable minimum rate;
- (5) The amount, rate per hundredweight, and nature of each deduction claimed by the handler; and
- (6) The net amount of payment to the producer.

§ 1131.74 [Reserved]

§ 1131.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk shall be adjusted according to the location of the plant at which the milk was first physically received by subtracting from the price the amount by which the Class I price specified in § 1131.50 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1131.50, the difference shall be added to the uniform price; and

(b) The uniform price applicable to other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted uniform price shall not be less than the lowest announced class price.

§ 1131.76 Payments by handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1131.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1131.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

Administrative Assessment and Marketing Service Deduction

§ 1131.85 Assessment for order administration.

See § 1000.85 of this chapter.

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See § 1000.86 of this chapter.

PART 1134—MILK IN THE WESTERN MARKETING AREA

Subpart—Order Regulating Handling

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- 1134.86 Deduction for marketing services.

Authority: 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

General Provisions

§ 1134.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter apply to and are hereby made a part of this order.

Definitions

§ 1134.2 Western marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Utah

All of the State of Utah.

Colorado Counties

Delta, Garfield, Mesa, and Montrose.

Idaho Counties

Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley, and Washington.

Nevada Counties

Elko, Lincoln, and White Pine.

Oregon Counties

Baker, Grant, Harney, Malheur, and Union.

Wyoming Counties

Lincoln and Uinta.

§ 1134.3 Route disposition.

See § 1000.3 of this chapter.

§ 1134.4 Plant.

See § 1000.4 of this chapter.

§ 1134.5 Distributing plant.

See § 1000.5 of this chapter.

§ 1134.6 Supply plant.

See § 1000.6 of this chapter.

§ 1134.7 Pool plant.

Pool Plant means a plant or unit of plants specified in paragraphs (a) through (e) of this section. The pooling standards described in paragraphs (a), (c), and (d) of this section are subject to modification pursuant to paragraph (f) of this section.

(a) A distributing plant from which during the month there is route disposition equal to 25 percent or more of the total quantity of bulk fluid milk products physically received at such plant and there is route disposition in the marketing area of at least 15 percent of total route disposition. For purposes of this section, packaged fluid milk products that are transferred to a distributing plant shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of determining the pool status of the transferring plant under this section.

(b) A distributing plant located in the marketing area which during the month processes a majority of its receipts of milk products into aseptically packaged fluid milk products. If during the month the plant had no route disposition into any federal milk order the plant operator may request nonpool status for such plant for the month.

(c) A supply plant from which during the month the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section is 35 percent or more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1134.12(b)) and handlers described in § 1000.9(c), including milk diverted by the plant operator, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request. A plant withdrawn from pool supply plant status may not be reinstated for any subsequent month of the March through July period unless it qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1134.13(c);

(3) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (f) of this section unless it has been a pool supply plant during each of the immediately preceding three months.

(d) A milk manufacturing plant located within the marketing area that is operated by a cooperative association if, during the month or the immediately preceding 12-month period ending with the current month, 35% or more of such cooperative's member producer milk (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants located in the marketing area and operated by the same handler may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must individually qualify as a pool plant pursuant to paragraph (a) of this section.

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit must be filed by the handler with the market administrator prior to the first day of the month for which such status is to be effective. The unit shall continue from month to month thereafter without further notification.

The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) The applicable percentages in paragraphs (a), (c), and (d) of this section may be increased or decreased by the market administrator if found necessary to obtain needed shipments or to prevent uneconomic shipments. Before making a finding that a change is necessary, the market administrator shall investigate the need for revision, either on the market administrator's own initiative or at the request of interested persons. If such investigation shows that a revision might be appropriate, a notice shall be issued stating that such a revision is being considered and inviting written data, views, and arguments. If the market administrator determines that an adjustment to the shipping percentages is necessary, the market administrator shall notify the industry within one day of the effective date of such adjustment.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in 1000.8(e).

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) or (e) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for three consecutive months;

(4) A plant located outside the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater sales in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this order, or the plant

has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1134.8 Nonpool plant.

See § 1000.8 of this chapter.

§ 1134.9 Handler.

See § 1000.9 of this chapter.

§ 1134.10 Producer-handler.

Except as provided in paragraph (g) of this section, *producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;

(b) Receives no fluid milk products from sources other than own farm production, pool handlers, and plants fully regulated under another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool handlers;

(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to retail outlets or to a pool handler's plant;

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and

(g) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under § 1134.7(a) and the farm operated as a producer under § 1134.12.

§ 1134.11 Proprietary bulk tank handler.

(a) Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1134.13, subject to the following conditions:

(1) Such person (who, if qualified pursuant to this paragraph, shall be known as a *proprietary bulk tank handler*) must operate a plant located in the marketing area at which milk is processed only into Class II, Class III, or Class IV products; and

(2) Prior to operating as a handler pursuant to this paragraph, such person must submit to the market administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk.

§ 1134.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1134.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is delivered to an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1134.13(d);

(3) A dairy farmer whose milk is diverted to a pool plant by a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

(5) A dairy farmer whose milk was received at a pool plant if during the month milk from the same farm was received at a nonpool plant (except a nonpool plant that has no utilization of milk products in any Class other than

Class III or Class IV) other than as a diversion under this or some other Federal order.

§ 1134.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer, by a handler described in § 1000.9(c), or by a handler described in § 1134.11. Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of the pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it was picked up at the producer's farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) or in § 1134.11 in excess of the quantity delivered to pool plants.

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant, a cooperative association described in § 1000.9(c), or a proprietary bulk tank handler described in § 1134.11, to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's milk production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under this order (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions) the handler diverts to nonpool plants not more than 80 percent;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in (d)(2) of this section shall not be producer milk. If the diverting handler, cooperative association, or proprietary bulk tank handler fails to designate the dairy farmers' deliveries that are not to be

producer milk, no milk diverted by the handler, cooperative association, or proprietary bulk tank handler during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1134.12(b)(5); and

(5) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1134.14 Other source milk.

See § 1000.14 of this chapter.

§ 1134.15 Fluid milk product.

See § 1000.15 of this chapter.

§ 1134.16 Fluid cream product.

See § 1000.16 of this chapter.

§ 1134.17 [Reserved]

§ 1134.18 Cooperative association.

See § 1000.18 of this chapter.

§ 1134.19 Commercial food processing establishment.

See § 1000.19 of this chapter.

Handler Reports

§ 1134.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator receives the report on or before the 7th day after the end of each month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler that operates a pool plant pursuant to § 1134.7, and each handler described in § 1000.9(c) or in § 1134.11, shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein

(other solids), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the handler; and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1134.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler that operates a pool plant pursuant to § 1134.7 and each handler described in § 1000.9(c) and in § 1134.11 shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1134.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1134.32 Other reports.

In addition to the reports required pursuant to §§ 1134.30 and 1134.31, each handler shall report any information the market administrator

deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1134.40 Classes of utilization.

See § 1134.40 of this chapter.

§ 1134.41 [Reserved]

§ 1134.42 Classification of transfers and diversions.

See § 1000.42 of this chapter.

§ 1134.43 General classification rules.

See § 1000.43 of this chapter.

§ 1134.44 Classification of producer milk.

See § 1000.44 of this chapter.

§ 1134.45 Market administrator's reports and announcements concerning classification.

See § 1000.45 of this chapter.

Class Prices

§ 1134.50 Class prices and component prices.

See § 1000.50 of this chapter.

§ 1134.51 Class I differential and price.

The Class I differential shall be the differential established at Salt Lake County, Utah, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Salt Lake County, Utah.

§ 1134.52 Adjusted Class I differentials.

See § 1000.52 of this chapter.

§ 1134.53 Announcement of class prices and component prices.

See § 1000.53 of this chapter.

§ 1134.54 Equivalent price.

See § 1000.54 of this chapter.

Producer Price Differential

§ 1134.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of its pool plants, and of each handler described in § 1000.9(c) and § 1134.11 as follows:

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I as determined pursuant to § 1000.44(a) by the Class I skim milk price applicable at the handler's location; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I as determined pursuant to § 1000.44(b) by the Class I butterfat price applicable at the handler's location.

(b) Add the Class II value, computed as follows:

(1) Multiply the hundredweight of skim milk in Class II as determined pursuant to § 1000.44(a) by 70 cents;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class II as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class II as determined pursuant to § 1000.44(b) by the butterfat price;

(c) Add the Class III value computed as follows:

(1) Multiply the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average protein content of producer skim milk received by the handler, and multiply the resulting pounds of protein by the protein price;

(2) Add an amount obtained by multiplying the pounds of skim milk in Class III as determined pursuant to § 1000.44(a) by the average other solids content of producer skim milk received by the handler, and multiply the resulting pounds of other solids by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III as determined pursuant to § 1000.44(b) by the butterfat price;

(d) Add the Class IV value computed as follows:

(1) Multiply the pounds of skim milk in Class IV as determined pursuant to § 1000.44(a) by the average nonfat solids content of producer skim milk received by the handler, and multiply the resulting pounds of nonfat solids by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV as determined pursuant to § 1000.44(b) by the butterfat price;

(e) [Reserved]

(f) Add the amounts obtained from multiplying the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.43(b)(2) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(g) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to

§ 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (iii) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(i) Add the amount obtained from multiplying the difference between the Class I price and the Class III price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I pursuant to § 1000.43(d); and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1000.76(a)(5) or (c).

§ 1134.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. If the unreserved balance in the producer-

settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made payments required pursuant to § 1134.71 for the preceding month shall not be included in the computation of the producer price differential. The report of such handler shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1134.60 for all handlers required to file reports prescribed in § 1134.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1134.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the sum of the location adjustments computed pursuant to § 1134.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1134.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1134.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The other solids price;

(d) The butterfat price;

(e) [Reserved]

(f) The average butterfat, protein and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk**§ 1134.70 Producer-settlement fund.**

See § 1000.70 of this chapter.

§ 1134.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month. Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1134.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1134.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) [Reserved]

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1134.60(i) by the producer price differential as adjusted pursuant to § 1134.75 for the location of the plant from which received.

§ 1134.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1134.71(b) exceeds the amount computed pursuant to § 1134.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1134.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) and (c) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial Payment.* On or before the 25th day of each month to each producer an amount not less than 1.2 times the lowest class price for the

preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(2) *Final Payment.* On or before the 17th day of the following month, not less than an amount computed by the sum of the following:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1134.75;

(ii) The pounds of butterfat in producer milk received times the butterfat price for the month;

(iii) The pounds of protein in producer milk received times the protein price for the month;

(iv) The pounds of other solids in producer milk received times the other solids price for the month;

(v) [Reserved]

(vi) Less any payments made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions made for marketing service pursuant to § 1000.86;

(b) *Partial payment to a cooperative association.* On or before the 24th day of each month each handler shall pay to a cooperative association, which the market administrator determines is authorized by its members to collect payment for their milk, an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk received during the first 15 days of the month from such cooperative association, including the milk of producers not members of such cooperative association who the market administrator determines have authorized the cooperative association to collect payment for their milk;

(c) *Final Payment to a cooperative association.* On or before the 16th day of the following month, each handler shall pay to a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk not less than an amount computed pursuant to paragraph (a)(2) of this section for milk received from such cooperative association during the month, including the milk of producers not members of such cooperative association who the market administrator determines have authorized the cooperative association to collect payment for their milk;

(d) If a handler has not received full payment from the market administrator pursuant to § 1134.72 by the payment date specified in paragraph (a), (b), or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association by not more than the amount of such underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer settlement fund, and in the event the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) [Reserved];

(5) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pounds of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1134.74 [Reserved]**§ 1134.75 Plant location adjustments for producer milk and nonpool milk.**

(a) The producer price differential for producer milk shall be adjusted according to the location of the plant at

which the milk was first physically received by subtracting from the price differential the amount by which the Class I price specified in § 1134.51 exceeds the Class I price at the plant's location. If the Class I price at the plant location exceeds the Class I price specified in § 1134.51, the difference shall be added to the producer price differential; and

(b) The producer price differential applicable to other source milk shall be adjusted following the procedure specified in paragraph (a) of this section, except that the adjusted producer price differential shall not be less than zero.

§ 1134.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76 of this chapter.

§ 1134.77 Adjustment of accounts.

See § 1000.77 of this chapter.

§ 1134.78 Charges on overdue accounts.

See § 1000.78 of this chapter.

Administrative Assessment and Marketing Service Deduction

§ 1134.85 Assessment for order administration.

See § 1000.85 of this chapter.

§ 1134.86 Deduction for marketing services.

See § 1000.86 of this chapter.

Dated: January 21, 1998.

Michael V. Dunn,

Assistant Secretary for Marketing and Regulatory Programs.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A: Summary of Preliminary Suggested Order Consolidation Report

Ten marketing areas are suggested in the preliminary consolidation report. As a means of determining where interrelationships among the current marketing areas are strongest, data relating to the receipts and distribution of fluid milk products by distributing plants were gathered for all known distributing plants located in the 47 contiguous States, not including the State of California, for the month of October 1995. At this time, California is not included as a suggested order area. The 1996 Farm Bill allows for the inclusion of a California Federal milk order if California producers petition for and approve an order. If a California order were included in the suggested Federal order structure at a later time, it would encompass the entire State and would include no area outside the State of California. Although interest in a Federal order has been expressed by some California producer groups, no definite action has been taken.

An analysis of the distribution and procurement patterns of the fluid processing

plants, along with other factors, was used to determine which order areas were most closely related. Proposals submitted by the public were also taken into account. The primary criteria used in determining which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation were:

1. Overlapping route disposition.
2. Overlapping areas of milk supply.
3. Number of handlers within a market.
4. Natural boundaries.
5. Cooperative association service areas.
6. Features common to existing orders, such as similar multiple component pricing payment plans.
7. Milk utilization in common dairy products.

The requirement to consolidate existing marketing areas does not specify expansion of regulation to previously nonfederally regulated areas where such expansion would have the effect of regulating handlers not currently regulated. However, a number of the current marketing areas enclose unregulated areas. These "pockets" are included in the suggested merged marketing areas only if their inclusion does not change the current regulatory status of a plant. In the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in a combined marketing area will likely meet the pooling standards of a suggested consolidated order. Further expansion of the marketing areas, which would result in regulating additional handlers, is an issue that should be addressed by the industry. Proposals to take such action should be accompanied by supporting data, views, and arguments concerning the need and basis for any such expansion.

The 10 suggested consolidated marketing areas and the major reasons for consolidation are:

1. Northeast

Current marketing areas of the New England, New York-New Jersey, and Middle Atlantic Federal milk orders. Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. The orders are also surrounded by nonfederally regulated territory. A further measure of association is evident by industry efforts to study and pursue consolidation of the three Federal orders, as well as some of the nonfederally regulated territory, prior to the 1996 Farm Bill.

2. Appalachian

Current marketing areas of the Carolina and Tennessee Valley Federal milk orders, and a portion of the Louisville-Lexington-Evansville Federal milk order. Overlapping sales and procurement areas between these marketing areas are major factors for supporting such a consolidation.

3. Florida

Current marketing areas of the Upper Florida, Tampa Bay, and Southeastern

Florida Federal milk orders. Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

4. Southeast

Current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area, 15 currently unregulated Kentucky counties, and 2 currently unregulated northeast Texas counties. Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and the Kentucky and Texas counties suggested for inclusion. There is minimal sales area overlap with handlers regulated under other Federal orders.

5. Mideast

Current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Indiana Federal milk orders, plus most of the current marketing area of the Louisville-Lexington-Evansville Federal milk order, Zone 2 of the Michigan Upper Peninsula Federal milk order, and 12 counties of the Southern Illinois-Eastern Missouri Federal milk order. Major criteria suggesting this consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas suggested to be consolidated. With the consolidation, most route disposition by handlers located within the suggested Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area suggested to be included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

6. Upper Midwest

Current marketing areas of the Chicago Regional and Upper Midwest Federal milk orders, plus Zones I and I(a) of the Michigan Upper Peninsula Federal milk order and seven unregulated or partly unregulated Wisconsin counties. Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders, overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order, natural boundary limitations, and the prevalence of cheese as a major manufactured product for the substantial reserve milk supplies that exceed fluid milk needs.

7. Central

Current marketing areas of the Southern Illinois-Eastern Missouri (less 12 counties included in the suggested Mideast marketing area), Central Illinois, Greater Kansas City, Nebraska-Western Iowa (less 11 currently-unregulated counties suggested to be unregulated), Eastern South Dakota, Iowa, Southwest Plains, and Eastern Colorado Federal milk orders, plus 63 currently-unregulated counties in seven of the states. Major criteria suggesting this consolidation include the overlapping procurement and route disposition between the current orders. The suggested consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The suggested consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, most of the producers in these areas

share membership in several common cooperatives.

8. Southwest

Current marketing areas of the Texas, New Mexico-West Texas, and Central Arizona Federal milk orders. Major criteria suggesting consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for all three orders. In addition, there is some route disposition by Central Arizona handlers into the New Mexico-West Texas marketing area, and the Central Arizona market contains a small number of handlers.

9. Western

Current marketing areas of the Western Colorado, Southwestern Idaho-Eastern

Oregon, and Great Basin Federal milk orders. Major criteria suggesting consolidation include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also share a similar multiple component pricing plan. The Western Colorado order is included because it is a small market where data cannot be released without revealing confidential information unless combined with the adjacent Great Basin order.

10. Pacific Northwest

Current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon. The degree of association with other marketing areas is insufficient to warrant consolidation.

Following is a table summarizing relevant data for the consolidated markets:

CONSOLIDATED MARKET SUMMARY

[Based on October 1995 data]

Consolidated order	Total producer milk (1,000 lbs.)	Number of fully regulated distributing plants	Combined class I utilization (percent)
Northeast	1,934,833	85	46.7
Appalachian	320,198	25	82.5
Florida	200,397	18	88.3
Southeast	443,921	38	84.3
Mideast	¹ 1,140,952	68	57.8
Upper Midwest	² 1,046,539	⁴ 27	34.2
Central	³ 932,929	42	50.6
Southwest	861,307	31	48.3
Western	304,793	14	⁵ 31.7
Pacific Northwest	501,257	23	36.3
Total	7,687,126	371	n/a

¹ Producer milk for F.O. 44 is included. Producer milk for a F.O. 32 handler who would be pooled under the suggested Mideast market is included in the Central consolidated market.

² Producer milk for F.O. 30 and F.O. 68 only.

³ Producer milk for a F.O. 32 handler that would be in the Mideast consolidated market is included.

⁴ A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 15.3% combined Class I utilization.

⁵ A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.8% combined Class I utilization.

Appendix B: Summary of Pricing Options

Several options for modifying Class I pricing under the Federal milk market order program, representing a spectrum of views, are discussed in this summary report. The accompanying technical report summarizes all of the comments and proposals received by the Department related to Class I pricing under Federal orders.

Most Class I pricing concepts that were suggested would continue to employ a market-driven basic formula price (BFP) with an added differential. Differentials are a composite of one or more of the following elements: (1) A fixed component, (2) a location adjustment, (3) an adjustor relating to utilization, or (4) the cost of balancing the market. Based on the pricing concepts received, the following options were developed:

Option 1A: Location-Specific Differential

\$1.60 per hundredweight fixed differential for three surplus regions (Upper Midwest, West, and Southwest) within a nine-zone national price surface, plus for the other six zones an added component that reflects regional differences in the value of fluid and manufacturing milk.

Option 1B: Modified Location-Specific Differential Option

\$1.00 per hundredweight fixed differential plus an added component that reflects the cost of moving bulk milk to deficit markets.

Option 2: Relative Use Differential

\$1.60 per hundredweight fixed differential plus a formula-based differential driven by the ratio of Class I milk to all other uses of milk.

Option 3A: Flat Differential Option

\$1.60 per hundredweight flat differential, uniformly applied across all orders to generate an identical minimum Class I price.

Option 3B: Flat Differential Modified by Class I Use—

\$2.00 per hundredweight differential in markets where Class I utilization is less than 70 percent on an annual basis and a differential equal to \$2.00 + \$0.075(Class I use %—70%) in markets where the Class I utilization is equal to or exceeds 70 percent.

Option 4: Demand-Based Differential—

\$1.00 per hundredweight fixed differential plus a transportation credit based on location of reserve milk supplies.

Estimated Class I differentials are presented for each option to provide a preliminary basis for determining impacts that may occur. The report provides estimated differentials for the suggested 10

consolidated orders and for the current 32 Federal milk marketing orders.

The report concludes by soliciting comments on the options presented and poses a series of questions for the public to address when submitting comments back to the Department on the issue of Class I pricing.

Appendix C: Summary of Classification Report

The Agricultural Marketing Agreement Act of 1937 provides that all milk should be classified "in accordance with the form in which or the purpose for which it is used." This has resulted in a system of uniform classification provisions that places milk used for fluid purposes in the highest use class, Class I, and other manufactured products in lower classes, Classes II, III, and III-A.

Currently products packaged for fluid consumption such as whole milk, skim milk, buttermilk, and flavored milk drinks are classified as Class I products. Class II products include ice cream, yogurt, cottage cheese, and cream. Class III and Class III-A products include cheese, butter, and nonfat dry milk.

Among the changes in classification recommended in the technical report are the following:

- Eggnog would be reclassified from Class II to Class I.
- Any fluid beverage having less than 6.5 percent nonfat milk solids would be reclassified from Class II to Class I.
- Cream cheese would be reclassified from Class III to Class II.

The technical report recommends changing the classification of milk used in nonfat dry milk from Class III-A to Class III. The report recommends that if Class III-A pricing is not eliminated, the following four alternatives be considered:

- Place a floor beneath the Class III-A price;
- Restrict III-A pricing to certain months or to certain markets;
- Provide an up-charge for nonfat dry milk used in higher-valued products; or
- Provide for a combination of these options.

Maintaining the classification of milk used to make nonfat dry milk in Class III-A is also an option, although not discussed in the technical report.

The technical report addresses Class III-A pricing because of industry concerns about the substitution of nonfat dry milk for fluid milk in Class II and III uses when the Class III-A price is substantially below the Class III price.

Appendix D: Summary of Identical Provisions Report

Federal milk marketing orders contain numerous provisions that establish the regulations for the operation of the orders. Over the years, the orders have been individualized to account for specific situations associated with a given marketing area. However, there are several provisions within the orders that are similar or that could be similar and still provide for efficient and orderly marketing of milk.

The technical report does the following:

- Suggests a model for establishing the consolidated orders and provides suggestions on the order language that can be adopted uniformly throughout all orders.
- Reviewed, simplified, modified, and eliminated differences in order provisions that:
 - Define various terms used in the orders
 - Establish regulatory standards for plants and handlers
 - Provide for uniform reporting dates of milk receipts and utilization
 - Provide for uniform dates for payment of milk
 - Provide for computation of a uniform price
 - Reduces performance standards to make it easier for producers to associate with a market.

At this time, it is impossible to determine if there would be any financial impact on producers, handlers, or consumers as a result of any of these suggested provision revisions. It is projected that there will be little impact on the overall program because the changes primarily provide for uniformity. There may be minimal impact on selected individual producers, handlers, or consumers, but this cannot be determined until more specific information is developed regarding the orders (i.e., marketing area and pricing). The suggested identical provisions will be applied to each of the suggested consolidated orders and determinations will be based on the marketing conditions of the given region.

One suggested change in the report that may stimulate some debate is the definition of a producer-handler. The technical report suggests applying the most liberal standard to the producer-handler definition to prevent any producer-handler from becoming regulated as a result of milk order reform. Producer-handlers have been exempt from full regulation because they assume the full risks associated with being a producer and a distributor of milk produced with only occasional and small volumes of milk being purchased from other dairy farmers.

Appendix E: Summary of Basic Formula Price Report

The basic formula price (BFP) is used to determine Federal order prices for milk used in manufactured products and, with the addition of differentials, to determine minimum Class I and II prices for milk pooled under the Federal orders. The current BFP is based on a survey of prices paid for manufacturing grade (Grade B) milk by plants in Minnesota and Wisconsin, updated by month-to-month changes in commodity prices (especially cheese). The continuing decline in the volume of Grade B milk produced in the upper Midwest and nationally is an indication that, in the near future, the M-W price series may not be statistically reliable as an indicator of the value of milk used in manufactured products.

The BFP Committee has received input provided during a public BFP Forum held in Madison, Wisconsin, and from over 200 written public comments, and conducted a survey of transaction prices for manufactured dairy products. The Committee also has sponsored analysis by a group of university

researchers, and conducted extensive study and analysis of its own. The BFP Committee evaluated alternatives to the BFP against the criteria of stability, predictability, simplicity, uniformity, transparency, sound economics and reduced regulation. Options identified by the Committee were grouped into the following categories:

Options Considered: Economic formulas, Product price and component formulas, Futures markets, California pricing, Cost of production, Informal rulemaking, Competitive pay price, Pooling differentials only.

At this time, the Committee has identified four options for further discussion and debate:

- A four-class, multiple component pricing plan to price butterfat, protein and lactose used in cheese (Class III), and butterfat and nonfat solids used in butter/powder (Class IV).
 - A three-class, multiple component pricing plan to price protein used in cheese, butterfat used in butter, and other nonfat solids used in powder (Class III—one manufacturing class).
 - A product price formula computed from the butter, powder and cheese shares of U.S. production, using seasonal product yields and a California cost-based make allowance; and
 - A competitive pay price series using a national weighted average price paid for Grade A milk used in manufactured products, updated by a product price formula. The price series would contain an adjuster to attempt to remove the effect of current regulation and to reduce it to a level more comparable to the current BFP.
- As a basis for Class I prices, the BFP could be made more stable by using an economic formula or using a moving average of a manufacturing price. Class II prices could be based on components or continue to include a differential from the manufacturing price level.

The BFP Committee is continuing to study and analyze alternatives in response to public comments.

Appendix F: Summary of Revised Preliminary Suggested Order Consolidation Report

The ten marketing areas suggested in the initial preliminary consolidation report have increased to eleven and been modified to some extent in this revised preliminary report. Several of the initially suggested marketing areas were the subjects of numerous comments containing information that indicated that the boundaries of those areas should be re-evaluated. In addition, shifts in regulation and distributing plant distribution areas were known to have occurred. As a result, more detailed and updated (January 1997) data was obtained relating to the receipts of producer milk and distribution of fluid milk products by distributing plants in a number of the initially-suggested order marketing areas. As a result, changes were made in the suggested marketing areas of the Northeast, Appalachian, Southeast, Mideast, Upper Midwest, Central, Southwest, and Western

regions, and a new Arizona-Las Vegas area was added.

An analysis of the distribution and procurement patterns of the fluid processing plants, along with other factors, was used to determine which order areas were most closely related. Proposals submitted by the public were also taken into account. The primary criteria used in determining which markets exhibit a sufficient degree of association in terms of sales, procurement, and structural relationships to warrant consolidation continued to be:

1. Overlapping route disposition.
2. Overlapping areas of milk supply.
3. Number of handlers within a market.
4. Natural boundaries.
5. Cooperative association service areas.
6. Features common to existing orders, such as similar multiple component pricing plans.
7. Milk utilization in common dairy products.

In the initial preliminary report, it was observed that the Farm Bill requirement to consolidate existing marketing areas does not specify expansion of regulation to previously non-Federally regulated areas where such expansion would have the effect of regulating handlers not currently regulated. This revised preliminary report suggests that some currently non-Federally regulated area be added on the basis of comments supported by data, views and arguments filed by interested persons. Specifically, unregulated areas contiguous to the initial suggested consolidated Northeast and Mideast marketing areas are suggested for inclusion in those suggested order areas. Some handlers currently not subject to full Federal order regulation would become pool plants if the suggested areas are added. Handlers who would be affected will be notified of the possible change in their status, and encouraged to comment.

As in the initial preliminary report, "pockets" of unregulated areas enclosed in the current marketing areas are included in the suggested consolidated marketing areas if their inclusion does not change the current regulatory status of a plant. However, in the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in a combined marketing area will meet the pooling standards of a suggested consolidated order area. As a result, this report suggests that some unregulated areas contiguous to currently-regulated areas be added to Federal order areas where additional handlers would be affected.

The 11 modified suggested marketing areas (with those modified from the initial preliminary report, and the modifications, marked by *) and the major reasons for consolidation are:

*1. Northeast

Current marketing areas of the New England, New York-New Jersey, and Middle Atlantic Federal milk orders, **with the addition of:* contiguous unregulated areas of New Hampshire, Vermont and New York; the western non-Federally regulated portion of Massachusetts, the Western New York State

order area, and Pennsylvania Milk Marketing Board Areas 2 and 3 in northeastern Pennsylvania.

Reasons for consolidation include the existence of overlapping sales and procurement areas between New England and New York-New Jersey and between New York-New Jersey and Middle Atlantic. In several cases, handlers who would become regulated because their total sales in the combined areas would meet pooling standards are located in areas where they compete with handlers who would not be similarly regulated. Handler equity suggests that these handlers, too, should become regulated. Another important measure of association is evidenced by industry efforts to study and pursue consolidation of the three Federal orders, as well as some of the nonfederally regulated territory, prior to the 1996 Farm Bill.

Sixteen additional distributing plants would be pooled as a result of the expansion of the consolidated area. Nine of these plants currently are partially regulated.

*2. Appalachian

Current marketing areas of the Carolina and Tennessee Valley Federal milk orders, **with the addition of:* all of the Louisville-Lexington-Evansville Federal order area (except one county—in the suggested Southeast area) and 26 currently-unregulated counties in Indiana and Kentucky.

More detailed and updated data showing overlapping sales and procurement areas between these marketing areas are major factors for supporting such a consolidation.

3. Florida

Current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.

Natural boundary limitations and overlapping sales and procurement areas among the three orders are major reasons for consolidation, as well as a measure of association evidenced by cooperative association proposals to consolidate these three marketing areas. Further, the cooperative associations in this area have worked together for a number of years to accommodate needed movements of milk between the three Florida Federal orders.

*4. Southeast

Current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area, plus 15 currently-unregulated Kentucky counties, **minus* 2 currently-unregulated counties in northeast Texas (in the suggested Southwest area).

Major reasons for this consolidation include sales and procurement area overlaps between the Southeast order and this county. There is minimal sales area overlap with handlers regulated under other Federal orders. Collection of additional data showed greater disposition in the two Texas counties from Texas handlers than from Southeast handlers. There are no handlers in these two counties that would be affected.

*5. Mideast

Current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania,

Southern Michigan, and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk order, and currently-unregulated counties in Michigan, Indiana, and Ohio **with the addition of:* Pennsylvania Milk Marketing Board Area 6 (in western/central Pennsylvania) and 2 currently-unregulated counties in New York, and **minus* the Louisville-Lexington-Evansville order area, 12 counties in Illinois, and unregulated counties in Indiana and Kentucky that are being suggested for inclusion in the Appalachian area.

Major criteria suggesting this consolidation include the overlap of fluid sales in the Ohio Valley marketing area by handlers from the other areas suggested to be consolidated. With the consolidation, most route disposition by handlers located within the suggested Mideast order would be within the marketing area. Also, nearly all milk produced within the area would be pooled under the consolidated order. The portion of the Michigan Upper Peninsula marketing area suggested to be included in the Mideast consolidated area has sales and milk procurement areas in common with the Southern Michigan area and has minimal association with the western end of the current Michigan Upper Peninsula marketing area.

Collection of additional data and recent changes in marketing patterns indicate that the relationship between the Louisville-Lexington-Evansville (L-L-E) area and the order areas initially included in the suggested Appalachian area is closer than relationship between L-L-E and the Mideast area.

Seven distributing plants that would not have been pool plants as a result of the initially-suggested consolidation would become pool plants due to the suggested expansion of the consolidated area into Pennsylvania and New York. The number of pool plants also is affected by a shift of pool plants from one consolidated area to another because of the shift of territory from the initially-suggested Mideast area to the revised suggested Appalachian area.

*6. Upper Midwest

Current marketing areas of the Chicago Regional, Upper Midwest, Zones I and II(a) of the Michigan Upper Peninsula Federal milk orders, and unregulated portions of Wisconsin, **with the addition of:* the Iowa, Eastern South Dakota, and most of the Nebraska-Western Iowa Federal order areas, plus currently-unregulated counties in Iowa and Nebraska.

Major consolidation criteria include an overlapping procurement area between the Chicago Regional and Upper Midwest orders and overlapping procurement and route disposition area between the western end of the Michigan Upper Peninsula order and the Chicago Regional order. More-detailed and updated information revealed more significant overlapping procurement and route disposition areas between the Iowa, Eastern South Dakota and Nebraska-Western orders and Chicago Regional and Upper Midwest orders than had been observed in the initial study. In addition, a common pricing plan for producers, natural boundary

limitations, and the prevalence of cheese as a major manufactured product for the substantial reserve milk supplies that exceed fluid milk needs exist in these orders. Some of the western Nebraska area is more closely associated with the Eastern Colorado area, however, and is suggested to remain with the Central consolidated area.

Eleven additional handlers that would have been pooled under the consolidated Central order in the initial Preliminary Report would be pooled under a consolidated Upper Midwest order under this revised report.

*7. Central

Current marketing areas of the Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Southwest Plains, and Eastern Colorado Federal milk orders, 10 counties currently in the Nebraska-Western Iowa Federal order area, plus 55 currently-unregulated counties in Kansas, Missouri, Illinois, Nebraska and Colorado, **plus* the 12 counties in the current Southern Illinois-Eastern Missouri area that initially were suggested as part of the consolidated Mideast area, **minus* the Eastern South Dakota, Iowa and most of the Nebraska-Western Iowa Federal order marketing areas.

Major criteria suggesting this consolidation include the overlapping procurement and route disposition between the current orders. The suggested consolidation would result in a concentration of both the sales and supplies of milk within the consolidated marketing area. The suggested consolidation would combine several relatively small orders and provide for the release of market data without revealing proprietary information. In addition, most of the producers in these areas share membership in several common cooperatives.

*8. Southwest

Current marketing areas of Texas and New Mexico-West Texas Federal milk orders, **with the addition of* two northeast Texas counties previously suggested to be added to the Southeast marketing area, and 47 currently-unregulated counties in southwest Texas, and **minus* the Central Arizona marketing area.

Major criteria suggesting consolidation include sales and procurement area overlaps and common cooperative association membership between the Texas and New Mexico-West Texas marketing areas, and similar marketing concerns with respect to trade with Mexico for both orders. Addition of the currently-unregulated Texas counties will result in the regulation of no additional handlers, and will reduce handlers' recordkeeping and reporting burden and the market administrator's administrative costs. In the initial consolidation report, the Central Arizona area was found to have a minimal association with the New Mexico-West Texas and Texas order areas. Further analysis showed that it has a much more significant degree of association with the Clark County, Nevada, portion of the current Great Basin order area.

The revised suggested consolidated Southwest area would include 4 fewer fully regulated pool plants as a result of the removal of the Central Arizona area.

*9. Arizona-Las Vegas

**An eleventh marketing area composed of the current marketing area of the Central Arizona order and the Clark County, Nevada, portion of the current Great Basin marketing area, plus eight currently-unregulated Arizona counties.*

The major criterion suggesting consolidation is sales overlap between the sole Las Vegas, Nevada, handler and handlers regulated under the Central Arizona order in both Clark County, Nevada, and unregulated

portions of northern Arizona. In addition, both areas exchange significant volumes of bulk and packaged milk with Southern California.

The suggested Arizona-Las Vegas marketing area would include five fully regulated handlers, with no additional handlers regulated because of the addition of the currently-unregulated northern Arizona area.

*10. Western

Current marketing areas of the Western Colorado, Southwestern Idaho-Eastern Oregon, and Great Basin Federal milk orders, **minus* Clark County, Nevada. Major criteria suggesting consolidation include overlapping sales between Southwestern Idaho-Eastern Oregon and Great Basin, as well as a significant overlap in procurement for the two orders in five Idaho counties. The two orders also share a similar multiple component pricing plan. The Western Colorado order is included because it is a small market where data cannot be released without revealing confidential information unless combined with the adjacent Great Basin order.

Collection of more-detailed data indicates that the strength of earlier relationships between the former Great Basin and Lake Mead orders that justified their 1988 merger have dwindled significantly, with the Las Vegas area now more closely related to southern California and competing most heavily with Central Arizona handlers.

11. Pacific Northwest

Current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon. The degree of association with other marketing areas is insufficient to warrant consolidation.

Following is a table summarizing relevant data for the consolidated markets.

CONSOLIDATED MARKET SUMMARY

[Based on October 1995 Data]

Consolidated order	Number of fully regulated distributing plants		Total producer milk (1000 lbs.)		Combined class I use (percent)		Weighted average utilization value	
	Initial report	Revised report	Initial report	Revised report ¹	Initial report	Revised report	Initial report	Revised report
Northeast	85	92	1,934,833	2,102,620	46.7	49.0	\$13.44	\$13.49
Appalachian	25	29	320,198	² 412,813	82.5	81.5	\$14.11	\$13.94
Florida	18	16	³ 200,397	204,541	88.3	88.3	\$15.05	\$15.05
Southeast	38	40	⁴ 443,921	442,705	84.3	84.3	\$14.26	\$14.25
Mideast	68	68	⁵ 1,140,952	1,103,366	57.8	57.2	\$12.96	\$12.94
Upper Midwest	27	39	⁶ 1,046,539	1,354,209	⁷ 34.2	⁸ 37.6	\$12.59	\$12.62
Central	42	30	⁹ 932,929	599,334	50.6	53.5	\$13.15	\$13.21
Southwest	31	26	861,307	680,232	48.3	48.1	\$13.36	\$13.39
Arizona—Las Vegas	N/A	7	N/A	¹⁰ 181,075	N/A	48.9	N/A	\$13.26
Western	14	11	304,793	293,714	¹¹ 31.7	¹² 29.6	\$12.79	\$12.78
Pacific Northwest	23	21	501,257	493,207	36.3	35.6	\$12.45	\$12.44
Total	371	379	7,687,126	7,867,816	N/A	N/A	N/A	N/A

¹ Initial report producer deliveries, adjusted to include only those handlers who would be fully regulated (i.e. Status = 1) in the revised suggested marketing area, unless otherwise noted. When applicable, producer deliveries for currently non-Federally regulated plants which would be fully regulated in a revised suggested consolidated order are included in the appropriate suggested consolidated order.

² Includes producer milk for one currently fully regulated plant which would be exempt (i.e. Status = 3B) in the Appalachian market in the revised preliminary report.

³ Excludes producer milk for one currently fully regulated F.O. 7 plant which would be regulated in the Florida market in the initial preliminary report.

⁴ Includes producer milk for one currently fully regulated F.O. 7 plant which would be regulated in the Florida market in the initial preliminary report.

⁵ Producer milk for F.O. 44 is included. Producer milk for a F.O. 32 handler who would be pooled under the initially-suggested Mideast market is included in the initially-suggested Central market.

⁶ Producer milk for F.O. 30 and F.O. 68 only.

⁷ A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 15.3% combined Class I utilization.

⁸ A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 19.7% combined Class I utilization.

⁹ Includes producer milk for a F.O. 32 handler that would be in the initially-suggested Mideast market.

¹⁰ Excludes producer milk for one currently fully regulated F.O. 139 plant and one currently unregulated plant which would be regulated in the Arizona-Las Vegas market in the revised preliminary report.

¹¹ A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.8% combined Class I utilization.

¹² A significant amount of producer milk was not pooled in October 1995. Estimated total producer milk would result in a 21.6% combined Class I utilization.

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